UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	NO. 3:11-00015
v.	)	
	)	JUDGE CAMPBELL
GUY SAVAGE	)	

UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR DEFAULT JUDGMENT, JUDICIAL NOTICE AND WRIT OF ERROR QUAE CORAM NOBIS RESIDANT

Comes now the United States, by and through Jerry E. Martin, United States Attorney and Lynne T. Ingram, Assistant United States Attorney and hereby responds in opposition to defendant's Motion for Default Judgment (R. 62), Judicial Notice (R. 65), and Writ of Error Quae Coram Nobis Residant (R. 67). The United States provides the following Memorandum of Points and Authorities to support its position of opposition.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

At issue is whether this Court should, in contradiction of the well-established and long-followed fugitive disentitlement doctrine, entertain defendant's Motion for Default Judgment (R. 62), Judicial Notice (R. 65), and Writ of Error Quae Coram Nobis Residant (R. 67), even though the defendant refuses to voluntarily submit himself to the personal jurisdiction of the Court and face the consequence of an adverse decision. The United States submits that the Court should not entertain defendant's various motions for the reasons set forth below.

By way of background, on or about January 13, 2011, a Federal Grand Jury sitting in the Middle District of Tennessee returned a 21-count Indictment against six defendants, including

defendant Guy Denton Savage (R. 3: Indictment). Defendant Savage was charged in twenty of the twenty-one counts of the Indictment with exporting firearms without a license, false statements, mail fraud, wire fraud, fraudulent purchases of firearms for export, and importing firearms without a license.

On or about March 28, 2011, four defendants, Charles Shearon, Elmer Hill, Michael Curlett, and Arnold See, Jr. entered guilty pleas and are currently awaiting sentencing (R.'s 37, 38, 39, 40: Plea Agreements). In or about March, 2011, defendant Sabre Defence Industries, LLC, which had ceased operations, was sold pursuant to orders in Case No. 3:11-bk-01431 of the United States Bankruptcy Court, Middle District of Tennessee. Defendant Sabre Defence Industries, LLC has not yet made an appearance before this Court and the government is unaware of any counsel claiming to represent Sabre.

Defendant Savage, a citizen of the United Kingdom, has not appeared before this Court and has not indicated that he will do so. In or around March 2011, the United States presented a formal request to the United Kingdom for the extradition of defendant Savage pursuant to the extradition treaty between the United States and the United Kingdom, which entered into force on April 26, 2007 ("the Extradition Treaty").

The basic tenets underlying the fugitive disentitlement doctrine are two-fold. First, a defendant should not be allowed to gain the benefit of a favorable result when the defendant is unwilling to risk the burden of an adverse decision. This is otherwise known as "mutuality." Second, disentitlement discourages escape and encourages voluntary surrender. Courts have long held that the fugitive disentitlement doctrine applies in situations where a defendant is indicted while overseas and attempts to litigate his case from afar. There are special circumstances where an exception to the

doctrine may be warranted, but none are present here. Thus, the United States submits that the Court should not allow the defendant to litigate from afar and bypass the jurisdiction of this Court and should deny the defendant's motions.

II. ARGUMENT

A. THE FUGITIVE DISENTITLEMENT DOCTRINE PROHIBITS DEFENDANT FROM LITIGATING WHILE NOT PERSONALLY SUBMITTING TO THE JURISDICTION OF THE COURT.

1. The Fugitive Disentitlement Doctrine

Over 40 years ago, the Supreme Court recognized the "fugitive disentitlement" doctrine, which holds that a fugitive may not invoke the jurisdiction of the court without submitting personally to the court's jurisdiction.[1] *Molinaro v. New Jersey*, 396 U.S. 356, 366 (1970). In *Molinaro*, the Supreme Court stated:

> While such an escape does not strip the case of its character as an adjudicable case or controversy, we believe it disentitles the defendant to call upon the resources of the court for determination of [his] claims.

See also United States v. Oliveri, 190 F.Supp.2d 933, 935 (S.D. Tex. 2001)("[I]n the years since *Molinaro*, the fugitive disentitlement doctrine has come to signify the unwillingness of courts to waste time and resources exercising jurisdiction over litigants who will only comply with favorable

[1] One of the bedrock principles of federal criminal law is defendant's presence. As the Ninth Circuit has noted, "[a] leading principle that pervades the entire law of criminal procedure is that, after indictment found, nothing shall be done in the absence of the [defendant.]" *Bustamante v. Eyman*, 456 F.2d 269, 272 (9th Cir. 1972)(quoting *Lewis v. United States*, 146 U.S. 370, 372 (1892)). The Federal Rules of Criminal Procedure codify this principle through Rule 43(a), which requires that, "[u]nless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at: (1) the initial appearance, the initial arraignment, and the plea; (2) every trial stage, including jury impanelment and the return of the verdict; and (3) sentencing." Fed. R. Crim. P. 43(a).

rulings"); *United States v. Wood*, 550 F.2d 435, 437-38 (9th Cir. 1977)(holding that dismissal of appeal of a fugitive is appropriate where there is no indication that the defendant would surrender upon a decision adverse to him).

Although the fugitive disentitlement doctrine is often invoked during the appellate process, "it also applies to pretrial motions made by fugitives in the district courts." *United States v. Oliveri*, 190 F. Supp. 2d at 936 (citing *United States v. Eagleson*, 874 F. Supp. 27, 29-31 (D. Mass. 1994)); see also *United States v. Eng*, 951 F.2d 461, 464 (2d Cir.1991)(defendant indicted on criminal charges while detained on separate charges in Hong Kong); *United States v. Kim*, CR-09-00077-JVS, DE 330 at 1-2(CDCA-SA 2011)(defendant in Korea when he was indicted).

The fugitive disentitlement doctrine is "grounded on the impropriety of permitting a fugitive to pursue a claim in federal court where he might accrue a benefit, while at the same time avoiding an action of the same court that might sanction him." *United States v. Eng*, 951 F.2d 461, 465 (2d Cir. 1991). This doctrine rests on the principle of mutuality. "The rationale is that a court should not afford a fugitive, who is unwilling to submit to its jurisdiction to stand trial for an alleged crime, the opportunity to improve his position by challenging the jurisdiction of the court." *United States v. Eagleson*, 874 F. Supp. 27, 29 (D. Mass. 1994); see also *United States v. Shapiro*, 391 F. Supp. 689, 693 (S.D.N.Y. 1975)(recognizing a need to insure some form of "mutuality," the courts are unwilling to allow a defendant to gain the benefit of a favorable result when he is unwilling to risk the burden of an adverse decision).[2]

---

[2] See also *Dawkins v. Mitchell*, 437 F.2d 646, 647-48 (D.C. Cir. 1970) (denying motion to enjoin enforcement of warrant issued under the Fugitive Felon Act; until defendants "are willing to submit their case for complete adjudication, win or lose," they are disentitled to call on court's resources), *Sapoundjiev v. Ashcroft*, 376 F.2d 727, 738-729 (7th Cir. 2004)("someone who cannot be bound by a loss has warped the outcome in a way prejudicial to the other side; the best

Aside from mutuality considerations, the Supreme Court has held that "disentitlement discourages the felony of escape and encourages voluntary surrenders" *Degen v. United States*, 517 U.S. 820, 824 (1996). If a defendant was permitted to litigate the merits of his or her case from the safety of the borders of another country, it stands to reason that the defendant would flee, even prior to indictment, and file a motion for special appearance and companion motion to dismiss. This exact scenario happened in *United States v . Oliveri*, 190 F.Supp. 2d 933 (S.D.Tex. 2001). In that case, the defendant, a citizen of Italy, came to the United States numerous times during the alleged conduct. The defendant realized he was going to be indicted for contempt of court and returned to Italy. The defendant, after being indicted while in Italy, filed a motion to dismiss. The court stated that "it appears the defendant is purposefully absenting himself from the United States in order to avoid arrest and arraignment on contempt charges." *Id.* At 934. The court declined to address the merits of defendant's motion to dismiss stating "[r]eaching the merits of a fugitive's pretrial motion may encourage others in the same position to take flight from justice." *Id*. at 936.

The defendant in this case is attempting to do the very same thing with his instant motions. Defendant traveled to the United States frequently during the time-frame set forth in the Indictment and directed acts in the United States related to the charges in the Indictment, yet instead of returning to the United States to face the charges set forth in the Indictment, defendant seeks to challenge its sufficiency from abroad and avoid submitting to the Court's jurisdiction. Should this Court reach a decision that is adverse to his position (that is, deny a motion for default judgment), the defendant can continue to fight extradition from his own home. The Court should not sanction this strategy.

---

solution is to dismiss the proceeding").

2. Discretion Of The Court

Several trial courts have recognized that they have discretion to grant or deny an absent defendant's motion for leave to make a special appearance. See *United States v. Shapiro*, 391 F. Supp. 689 (S.D.N.Y. 1975)(concluding that district court has the discretion to refuse to entertain a motion to dismiss the indictment where the defendant has become a fugitive); *United States v. Noriega*, 683 F. Supp. 1373, 1374(S.D. Fla. 1988)(holding that district court has the discretion to hear a challenge to the validity of the indictment and the court's jurisdiction over claims brought against a fugitive). The United States does not challenge the Court's discretion in this matter.

3. Special Circumstances May Occasionally Warrant An Exception To The Fugitive Disentitlement Doctrine

Courts have recognized that special circumstances may occasionally warrant the discretionary granting of an exception to the fugitive disentitlement doctrine. Such special circumstances have been found to exist when (1) the defendant does not qualify as a fugitive; (2) the defendant is not an "ordinary" fugitive; (3) the case presents "delicate" legal issues of first impression; (4) the case involves overarching political ramifications or overtones; or (5) the mutuality concerns have been otherwise mitigated. None of these factors are present in the instant case and there is no reason to depart from the general rule that fugitives are not permitted to litigate their cases from afar.

The Court should exercise its discretion to decline to consider the defendant's arguments at this stage, and thus should deny the defendant's motions. The government's request to extradite the defendant has been sent to the United Kingdom. The United States expects the defendant will be extradited based on the Extradition Treaty. Few, if any, of the unusual circumstances that have motivated some courts to permit a special appearance on behalf of a non-appearing defendant are

present here where the extradition efforts are still pending.

B. DEFENDANT IS A FUGITIVE

The government must show that the defendant concealed himself with intent to avoid prosecution. *United States v. Greever*, 134 F.3d 777, 780 (6th Cir. 1998). But, this intent can be inferred from the defendant's knowledge that he was wanted and his subsequent failure to submit to an arrest. *Id*. Here, defendant is not only aware of the existence of an indictment against him, but continues to fight his extradition through appeals.

Although the Sixth Circuit has not squarely addressed whether the fugitive disentitlement doctrine can be applied to pre-trial motions filed by absent defendants, it has extended the doctrine to matters beyond direct appeals, which was the matter at issue in *Molinari v. New Jersey*, 396 U.S. 356, 366 (1970), in which the Supreme Court first enunciated the doctrine. *See, e.g.*, *Garcia-Flores v. Gonzales*, 477 F.3d 439 (6th Cir. 2007) (immigration appeals); *Prevot v. Prevot*, 59 F.3d 556 (6th Cir. 1995) (civil actions); *Taylor v. Egeler*, 575 F.2d 773 (6th Cir. 1978) (habeas corpus petitions). The principles underlying the fugitive disentitlement doctrine should apply, as well, to the defendant, who continues to resist the United States' attempts to obtain his extradition. To the extent that any of his motions have merit, he can argue those when he is in the United States.

C. DEFENDANT LACKS STANDING AS HIS RIGHT TO COUNSEL HAS NOT YET BEEN DETERMINED

Since defendant continues to fight his extradition, he did not appear before the court at the November 16, 2011 hearing before Magistrate Judge E. Clifton Knowles to determine if counsel should be appointed. Defendant's waiver of his Sixth Amendment right to counsel must be knowing and voluntary. *Faretta v. California*, 422 U.S. 806, 835 (1975). Where a defendant wishes to

represent himself, the district court must ask the defendant a series of questions involving the defendant's familiarity with the law, legal system, and charges against him. *McBride*, 362 F.3d at 366 (citing *United States v. McDowell*, 814 F.2d 245, 250 (6th Cir. 1987). Even before a valid waiver can be established, the Court must provide a strong admonishment against self-representation. *Id*. The district court must make a finding that defendant knowingly and voluntarily waive his right to counsel. *Faretta v. California*, 422 U.S. at 835. That has yet to be accomplished for defendant based on his continued challenge to the extradition process. Until the determination of counsel has been made, defendant lacks standing to challenge the merits of his case.

D. DEFENDANT'S MOTIONS STATE NO RECOGNIZABLE CLAIM UNDER UNITED STATES LAW

Even if this Court determines that the fugitive doctrine is inapplicable, defendant's motions should be denied as they state no basis under United States law supporting his position. Instead, defendant has filed incoherent statements and requests. Defendant has failed to adequately state a valid legal argument. The Sixth Circuit will dismiss an appeal where a defendant fails to adequately brief an appellate issue by what amounts to nothing more than an incomprehensible rant. *Siller v. Seabold*, 52 Fed.Appx. 739, 2002 WL 31780927 (6th Cir. 2002). *Jackson v. Albany Appeal Bureau Unit*, 441 F.3d 51, 54 (2nd Cir.2006) (Dismissing appeal where the amended petition was found to be unintelligible). Defendant's claims are patently meritless and nonsensical.

III. CONCLUSION

Under the present circumstances, this Court should exercise its discretion to deny the defendant's Motion for Default Judgment, Judicial Notice, and Writ of Error Quae Coram Nobis Residant.

Respectfully submitted,
JERRY E. MARTIN
United States Attorney

s/ ***Lynne T. Ingram***
LYNNE T. INGRAM
Assistant United States Attorney
110 9th Avenue South, Suite A-961
Nashville, Tennessee 37203
Phone: 615-736-5151

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been filed with the electronic case filing system, on January 31, 2012. Additionally, a copy was sent to the defendant via the United States Postal Service.

Guy Savage
34 Daymer Gardens
Pinner, Middlesex, HA5 2HP
England

s/ ***Lynne T. Ingram***
LYNNE T. INGRAM, AUSA